

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of)	MM Docket 94-84
)	
Amendment of Section 73.202(b),)	RM-8478
Table of Allotments,)	
FM Broadcast Stations.)	
(Driscoll, Gregory, and Robstown,)	
Texas))	

TO: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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APR 28 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**COMMENTS OF GERALD G. BENAVIDES
IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULE MAKING**

Gerald G. Benavides (Benavides), by counsel and pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. §1.415) hereby respectfully submits his comments in response to the Further Notice of Proposed Rule Making, DA-95-394, released March 10, 1995¹, 60 Fed. Reg. 13947. The Further Notice discusses the substitution of FM channels in Robstown and Driscoll, Texas, and the deletion of vacant channel 283A at Gregory, Texas. In response to the Further Notice, and specifically relative to the allocation of FM Channel 283A at Gregory, Benavides states as follows:

1. In the Further Notice, the Commission recited that it had in its Notice of Proposed Rule Making 9 FCC Rcd 3580, (1994), sought comments on a petition for rule making filed by Cotton

¹ The Further Notice indicates a release date of March 10, 1994. In fact, it was released March 10, 1995, and the reference to 1994 is an obvious typographical error. 1995 was obviously intended instead of 1994.

Broadcasting ("petitioner"), licensee of Station KMIQ(FM), Channel 286A, Robstown, Texas. Petitioner had, inter alia, "requested deletion of vacant channel 283A at Gregory, Texas."

2. With respect to the requested Gregory deletion, the Further Notice concluded:

In regard to the deletion of the vacant and unoccupied channel at Gregory, the Notice stated that we would not delete a channel where an expression of interest is demonstrated by the filing of an application. Therefore, we stated if we received an acceptable application by the initial comment period specified in the Notice, which in this case was September 19, 1994, petitioner's proposal to delete Channel 283A at Gregory would be dismissed. However since that time, the Commission had imposed a freeze for both new application proceedings and comparative renewal proceedings. [Footnote omitted] Since the application filing windows were frozen during the comment period of this proceeding, parties were unable to file an application for Channel 283A at Gregory. In order to address this inconsistency, we are issuing the Further Notice to set forth a comment period by which an expression of interest for Channel 283A at Gregory can be filed.

3. Gerald Benavides is ready, willing, able and eager to file an application for vacant channel 283A at Gregory, Texas. He is primarily prevented from doing so at this time by the fact that Gregory has not been put on a window notice for the filing of FM applications. As soon as Gregory is put upon such a list and the list released, establishing dates for the acceptance of applications, Benavides will tender an application, prosecute it diligently and upon grant, will construct and operate a new FM broadcast station on Channel 283A at Gregory, Texas.

4. In fact, Benavides has been ready to file such an application for some time. Unaware of the instant docket

proceeding, Benavides inquired of the FM Branch, Mass Media Bureau about the window for Gregory in early September, 1994. The information available at the time was that the window would be opened "within a few weeks". Later inquiries of the staff, in early September, 1994 produced the suggestion that Benavides file a statement of interest in the channel, and that deletion of the channel was under consideration. There was no indication given, however, of the pendency of the instant docket proceeding at that time. Attached as Exhibit A is a copy of the letter that was filed by counsel for Benavides in response to that suggestion from a member of the Commission's staff at the time. That letter was filed September 19, 1994, stating that the law firm of Booth, Freret and Imlay had a client ready, willing and able to apply for the channel at Gregory, and requesting that channel 283A not be deleted at Gregory. Copies of that correspondence were distributed to all parties in this proceeding by the Secretary, on or about November 21, 1994. On November 22, 1994, counsel for Benavides corresponded with the Chief, Allocations Branch, notifying him of the interest of a client of the firm in applying for the Gregory Channel and asking that the September 19 letter be associated with the instant docket proceeding.

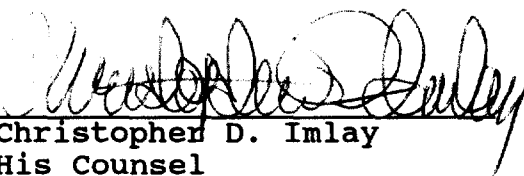
5. Benavides has been prepared to file an application, which in fact has been prepared, and is located in the office of counsel for Benavides, for a construction permit on FM Channel 283A at Gregory. This application will be filed as soon as a window for the

filing of such applications is opened and Benavides is permitted to file such an application.

Therefore, the foregoing considered, Gerald G. Benavides respectfully requests that Channel 283A not be deleted at Gregory, but instead that a window therefor be opened, and that Benavides be permitted to file his already prepared application therefor.

Respectfully submitted,

GERALD G. BENAVIDES

By 
Christopher D. Imlay
His Counsel

BOOTH FRERET & IMLAY
1233 20th Street, N. W.
Suite 204
Washington, D. C. 20036
(202) 296-9100

April 28 , 1995

LAW OFFICES OF
BOOTH, FRERET & IMLAY

RECEIVED

SUITE 204

1233 20TH STREET, N.W.

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SEP 19 '94

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ROBERT M. BOOTH, JR. (1911-1981)

JULIAN P. FRERET

CHRISTOPHER D. IMLAY

FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF THE
SECRETARY

September 19, 1994

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N. W., Room 222
Washington, D. C. 20554

Attention: Mr. John A. Karousos, Chief
Allocations Branch

Re: FM Channel 283A (104.5 MHz), Gregory, TX

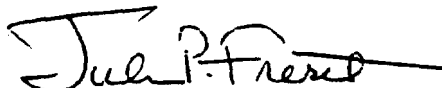
Dear Mr. Caton:

The captioned FM channel at Gregory, Texas is presently unoccupied and we have been informed that in the absence of a show of interest in applying for it, the Commission may be considering its deletion.

Please be advised that we have an applicant ready, willing, able and eager to tender an application for Channel 283A at Gregory, Texas, as soon as the Commission will accept it.

Accordingly, it is respectfully requested that (a) Channel 283A be not deleted from Gregory and (b) that the Commission issue a window at the earliest possible opportunity so that the only local radio service at Gregory can be resumed as soon as possible.

Yours very truly,


Julian P. Freret

JPF:mf

CC James Crutchfield, FM Branch

FILE COPY

EXHIBIT B

LAW OFFICES OF
BOOTH, FRERET & IMLAY

SUITE 204

1233 20TH STREET, N.W.
WASHINGTON, D.C. 20036

November 22, 1994

ROBERT M. BOOTH, JR. (1911-1981)

JULIAN P. FRERET

CHRISTOPHER D. IMLAY

Nov 22 '94

FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF THE
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Mr. John A. Karousos, Chief
Allocations Branch
Mass Media Bureau
Federal Communications Commission
2025 M Street, N. W., Room 8322
Washington, D. C. 20554

Attention: Ms. Pamela Blumenthal, Room 8308

Re: MM Docket No. 94-84, RM-8478, Gregory, TX

Dear Mr. Karousos:

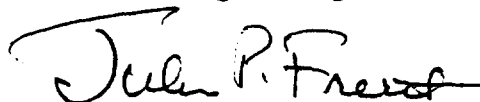
The captioned docket proposed deletion of FM Channel 283A at Gregory, Texas, and sought comments by September 19, 1994.

By timely letter (copy attached hereto), this office objected to the deletion of Channel 283A from Gregory, Texas and specifically stated that an applicant was ready, willing, able and eager to apply for that channel at Gregory.

Several weeks previous, the FM Branch had stated that a window would be opened for Channel 283A at Gregory "within a few weeks", apparently unaware of Docket 94-84.

The purpose of this letter is to ensure that our previous communication has been associated with Docket 94-84, that channel 283A will not be deleted from Gregory, and that a window will be announced shortly, permitting applicants to file for that channel.

Yours very truly,


Julian P. Freret

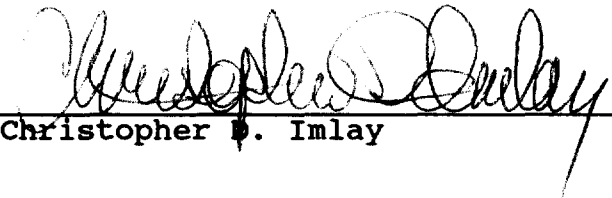
JPF:mf

CC Lee J. Peltzman, Esq.

CERTIFICATE OF SERVICE

I, Christopher D. Imlay, partner in the law firm of Booth, Freret & Imlay, do certify that copies of the foregoing pleading, COMMENTS OF GERALD G. BENAVIDES, were mailed this 28th day of April, 1995, via U. S. Mail, first class, postage prepaid, to the offices of the following:

Lee J. Peltzman, Esq.
Shainis & Peltzman
2000 L Street, Suite 200
Washington, D. C. 20036
Counsel for Petitioner


Christopher D. Imlay